Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Misc. Writ Petition No. 5235 of 2001 (M/S)

(Old No. 6477 of 1993)

Kichha Sugar Company Limited,
Kichha, District Nainital
Through its Executive Director …….... Petitioner

Versus

Tara Chand Mahtoliya
and another …… Respondents

Mr. Tanveer Alam Khan, learned counsel for the petitioner.
Mr. Narayan Dutt, learned counsel for respondent No. 1.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the constitution of India, the petitioner has sought quashing of the impugned order / award dated 24.09.1992 passed in adjudication case No. 97 of 1990 by the Labour Court, Haldwani.

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner is a Sugar Company owned and controlled by the U.P. State Sugar Corporation, Lucknow. It employed permanent as well as seasonal employees for running the business of sugar factory. Out of the seasonal workmen, some are engaged on daily wages and others as casual workmen to meet the emergent situation. The respondent No. 1, Tara Dutt Mahtoliya was employed on daily wages during the season 1982-83 till 1985-86. While he was working as a Watchman in the intervening night of 25/26 of October 1987, a theft took place in the residential Colony where-after the services of the respondent No. 1 were terminated on 27.10.1987. The termination was made due to the negligence in duty on the part of respondent No. 1. It appears that respondent No. 1 raised the

industrial dispute before the Labour Court, Haldwani (respondent No. 2) who gave its award dated 24.09.1992 (copy Annexure- 1 to the writ petition) whereby respondent No. 1 was directed to be reinstated in service with back wages. It is alleged in the writ petition that respondent No. 1 was not a regular employee of the petitioner-company. The petitioner-company has filed copy of the statement (copy Annexure- 2 to the writ petition) of respondent No. 1 regarding the incident of theft and hours of his duties. Although the award given by the respondent No. 2 is challenged, it is stated in the writ petition that the respondent No. 1 was re-employed in pursuance of the impugned award vide order dated 09.10.1992 (copy Annexure-3 to the writ petition). It is alleged in the writ petition that the petitioner-company is not liable to make payment of back wages for the period 27.10.1987 to 08.10.1992 of which the respondent No. 1 had done no work with the petitioner-company.

3) A counter affidavit has been filed on behalf of the respondent No. 1 in which it has been stated that initially answering respondent was appointed in the year 1978 and worked up to 27.10.1987 when his services were terminated on a allegedly wrong charge. In the counter affidavit it is denied if the answering respondent was at all guilty of any misconduct regarding the alleged theft which took place in the residential colony. According to the respondent No. 1, he is entitled to all full back wages from 27.10.1987 to 08.10.1992.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit, rejoinder affidavit filed by the parties along with the annexures annexed thereto.

5) The short question for consideration before this Court is whether, the impugned order / award dated 24.09.1992 passed in Adjudication case No. 97 of 1990 by respondent

No. 2, Labour Court, Haldwani, is illegal and, is the respondent No. 1 was not entitled to reinstatement in service with full back wages as awarded by the respondent No. 2?

6) Admittedly, respondent No. 1 was employed with the petitioner sugar factory on daily wages. It is also admitted that on 27.10.1987 his services were dispensed with after an incident of theft took place in the intervening night of 25/26 of October 1987 on which date he worked as a Watchman. It is also not disputed that no departmental enquiry took place regarding negligence on the part of respondent No. 1 and his services were dispensed with on the very next day of the alleged incident of theft. As such no evidence was recorded in any enquiry held by the petitioner-company. Statement of witnesses recorded by the Labour Court (respondent No. 2) are discussed by said authority. The learned Labour Court in paragraph 3 of its impugned report observes regarding the statement of witness, Sri B.D. Pant, Personal Officer as under:

> "जिरह में गवाह ने यह स्वीकार किया है कि चोरी की घटना के बारे में यह निश्चित रूप से पता नहीं चल सका कि चोरी की घटना वादी श्रमिक की शिफ्ट में हुई थी या उसके बाद। जिरह में उन्होने यह स्वीकार किया कि यह कहना सही है कि चोरी का निश्चित समय पता न लगने के कारण सेवायोजकों ने दोनों श्रमिकों को सन्देह के आधार पर कार्य से हटा दिया था। जिरह में उन्होने यह भी स्वीकार किया कि जाचं अधिकारी द्वारा जो बयान दर्ज किये गये थे वह वादी श्रमिक को डियुटी पर न लिये जाने के बाद दर्ज किये गये थे।"

Learned Labour Court has also found after recording the evidence that the respondent No. 1, as workman, has completed 240 days in a year and before termination of his services provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 were not complied with.

7) Sri T.A. Khan, learned counsel for the petitioner-company drew my attention to the Standing Orders relating to the Sugar Industries in Uttar Pradesh and referred to Clause-V of para 1 of Termination of Employment, which reads as under:

> *"5. Unless he has qualified for getting notice under Section 6-N of the U.P. Industrial Disputes Act, 1947, the employment of probationer, substitute, temporary or apprentice workman may be terminated by the Manager without any notice or any payment in lieu of notice."*

However, this Court finds that the case of respondent No. 1 is covered under Section 6-N of the U.P. Industrial Disputes Act, 1947 as there is a categorical finding in the impugned award that the respondent No. 1 has worked for more than 240 days in a calendar year. As such in the opinion of this Court, the aforesaid Standing Order does not help the petitioner-company.

8) My attention was also drawn on behalf of the petitioner-company to the principle of law laid down in ***Himanshu Kumar Vidharathi V. State of Bihar;*** (1997) 4 SCC pg. 391 and ***Life Insurance Corporation of India V. Raghvendra Seshagiri Rao Kulkarni;*** 1997 (77) F.L.R. pg. 782 and it is argued that the respondent No. 1, being a daily wager has no right to any post and his services are liableto be terminated at any time. I am unable to accept the submissions of the learned counsel for the reason that in the case of ***Himanshu Kumar (Supra)*** the concerned establishment was held not to be an industry while in the present case it cannot be said if the Kisaan Sugar Factory is not an industry. Similarly, the principles of law laid down in ***Life Insurance corporation of India case (Supra)*** does not help the petitioner-company either for the reason that said case pertains to different facts and circumstances relating to

termination of a probationer during the period of probation while it is not the case here.

9) As against this, Mr. Narayan Dutt, learned counsel for respondent No. 1 drew my attention to the principle of law laid down in ***E. Elumalai V. The Management of Simplex Concrete Piles (India) Ltd., Madras and another,*** 1970 LAB. I.C. 1460 (Vol. 3, C.N. 323) in which it has been held that causal workman or labourer is covered under the definition of '*Workman'* in view of Section 2(s) of Industrial Disputes Act. My attention was also drawn on behalf of respondent No. 1 to the principle of law laid down in ***U.P. Drugs & Pharmaceuticals Company Ltd. Vs. Ramanuj Yadav and others;*** (2003) 8 Supreme Court Cases pg. 334 in which it has been held that if a workman has worked for more than 240 days in a year, before retrenchment of such an employee, compliance of Section 6-N read with Section 2(g) of the U.P. Industrial Disputes Act, 1947 is necessary.

10) However, in view of principle of law laid down in ***M.P.S.E.B. Vs. Jarina Bee*** (2003) 6 SCC pg. 141 : AIR 2003 SC pg. 2657; ***P.G.I. Medical Education V. Raj Kumar*** (2001) 2 SCC pg. 54; ***Hindustan Motors V. Tapan Kumar Bhattacharya*** (2002) 6 SCC pg. 41; ***Indian Railways Construction V. Ajay Kumar*** (2003) 4 SCC pg. 579, it is settled that payment of full back wages is not a natural consequence on setting aside order of removal of service. In the opinion of this Court, in the facts and circumstances of the case, there is no justification of awarding full back wages to the respondent No. 1 (a daily wager), for the period he had not worked. Direction of payment of only 50% of wages for the period prior to reinstatement would have met ends of justice.

11) In view of the above discussion, facts and circumstances, this Court is of the opinion that there is no illegality in the

impugned order and award dated 24.09.1992 passed by the Labour Court, Haldwani except to the extent of direction to pay full back wages. Therefore, the writ petition is dismissed with regard to reinstatement of the respondent No. 1. However, the direction to pay full back wages is set aside and only 50% of back wages are ordered to be paid by the petitioner instead of full back wages, from the date of termination to the date of reinstatement. No order as to costs.

(P.C. Pant, J.)

Dt: October 11, 2004
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